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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,579	09/30/2003	Michael D. Lowery	17488	7885

7590

06/15/2005

Peter J. Gluck  
1700 E. St. Andrew Place  
Santa Ana, CA 92705

EXAMINER
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ZIMMER, MARC S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/676,579

Applicant(s)

LOWERY, MICHAEL D.

Examiner

Marc S. Zimmer

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-15, 17-19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15, 17-19 and 21-27 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-9 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Based on an indication of allowable subject matter in claim 20, Applicant has inserted all of the limitations set forth therein into claim 11 thus overcoming the prior art.

However, in the course of performing an updated/modified survey of the prior art, the Examiner encountered another reference that is anticipatory of a number of claims. Any inconvenience this may have caused Applicant is regretted.

### ***Claim Objections***

Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Insofar as a silicon is tetravalent, and one of the bonds is necessarily to the surface of the silica (or to an oxygen atom in the case that the treating agent is a siloxane), there are only three remaining sites at which an aryl group may be bonded so, naturally, there will be between 1 and 3 aryl groups per silicon atom.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Polmanteer et al., U.S. Patent # 4,418,165. Polmanteer discloses an optically clear silicone elastomer composition comprising a curable organopolysiloxane and silica, which has been treated with an organosilicon compound to render it hydrophobic. Various specific examples of the treating agent including several that are phenyl group functionalized are mentioned in column 19, lines 25-35. Likewise, the polysiloxane may also contain phenyl groups. Indeed, one of the specific embodiments of a polysiloxane of the invention is Gum B-A (column 24) containing 11 mol % methylphenylsiloxane units. Relevant to the present discussion column 24, line 5 identifies intraocular lenses as a potential application for which their composition is suited.

As for claim 4, the treated silica filler has a refractive index of between 1.42 and 1.46 depending on the structural attributes of the treating agent employed (column 13, lines 52-56).

#### ***Allowable Subject Matter***

Claims 11-15, 17-19, and 21-27 are allowable because they both disclose a polymer that has not been found in the prior art. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc S. Zimmer whose telephone number is 571-272-1096. The examiner can normally be reached on Monday-Friday 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6/8/05  
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*Mark J. Zimmer*

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